

Proposed technical correction:

SECTION ____. G.S. 24-10.1 reads as rewritten:

"§ 24-10.1. Late fees.

➡ (a) Subject to the limitations contained in subsection (b) of this section, any lender may charge a party to a loan or extension of credit governed by the provisions of G.S. 24-1.1, ~~24-1.2,~~ or 24-1.1A a late payment charge as agreed upon by the parties in the loan contract."

[(b) No lender may charge a late payment charge:

- (1) In excess of four percent (4%) of the amount of the payment past due; or
- (2) In excess of the amount disclosed with particularity to the borrower pursuant to the provisions of the Federal Consumer Credit Protection Act if the transaction is one to which the provisions of that act apply, which in no event shall exceed four percent (4%); or
- (3) For any payment unless past due for 15 days or more; provided, however, if the loan is one on which interest on each installment is paid in advance, no late payment charge may be charged until the payment is 30 days past due or more; or
- (4) More than once with respect to a single late payment. If a late payment charge is deducted from a payment made on the contract and such deduction results in a subsequent default on a subsequent payment, no late payment charge may be imposed for such default. If a late payment charge has been once imposed with respect to a particular late payment, no such charge shall be imposed with respect to any future payment which would have been timely and sufficient but for the previous default; provided that when a borrower fails to make an installment payment, and the terms of the loan agreement provide that subsequent payments shall first be applied to the past due balance, and the borrower resumes making installment payments but has not paid all past due installments, then the lender may enforce the contract according to its terms, imposing a separate late payment charge for each installment that becomes due until the default is cured; or
- (5) On any loan which by its terms calls for repayment of the entire balance in a single payment and not for installments of interest or principal and interest; or
- (6) Unless the lender notifies the borrower within 45 days following the date the payment was due that a late payment charge has been imposed for a particular late payment which late payment must be paid unless the borrower can show that the installment was paid in full and on time. No late payment charge may be collected from any borrower if the borrower informs the lender that non-payment of an installment is in dispute and presents proof of payment within 45 days of receipt of the lender's notice of the late charge.

(c) The provisions of this subsection apply only to home loans made by lenders described in G.S. 24-1.1A(a)(2). Notwithstanding that the note or other loan document sets forth a late payment charge in excess of that permitted in this section, the loan shall not be deemed to be unlawful if:

- (1) No late fee in excess of those permitted in this section has been assessed or collected by the lender; and

- (2) a. If the loan is executed on or after July 14, 1993, the lender provides written notice to the borrower within 90 days of the date of execution of the loan documents that the late payment charge with respect to the loan shall be four percent (4%) or less; or
- b. If the loan was executed prior to July 14, 1993, the lender provides written notice to the borrower within six months of that date that the late payment charge with respect to the loan shall be four percent (4%) or less. (1985, c. 755, s. 1; 1987, c. 447; 1993, c. 339, s. 1.)]

Explanation: G.S. 24-1.2 was repealed by S.L. 1998-119. The section dealt with a special interest rate cap for installment sales. There was apparently no successor provision.

From: Bill Patterson (Research)
Sent: Tuesday, March 15, 2016 11:41 AM
To: Bly Hall (Bill Drafting)
Subject: G.S. 24-10.1

Bly,

This statute in subsection (a) refers to G.S. 24-1.2, which has been repealed – I didn't review the rest of it but wanted to alert you.

Bill

Bill Patterson

Staff Attorney

Legislative Analysis Division

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